

SECTION 408 PROGRAM

What is Section 408 Permission?

Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended, and codified in 33 USC 408 (Section 408) provides that the Secretary of the Army may, upon the recommendation of the Chief of Engineers, grant permission to other entities for the permanent or temporary alteration or use of any U.S. Army Corps of Engineers (USACE) Civil Works project. An alteration refers to any action by any entity other than the Corp that builds upon, alters, improves, moves, occupies, or otherwise affects the usefulness, or the structural or ecological integrity of a USACE project. Section 408 permission requires a determination that the requested alteration is not injurious to the public interest and will not impair the usefulness of the project. This means USACE has the authority to review, evaluate, and approve all alterations to federally authorized civil works projects to make sure they are not harmful to the public and still meet the project's intended purposes mandated by congressional authorization. Routine operations and maintenance does not require 408 permissions.

See [Engineering Circular 1165-2-220](#) for the more details on the policy and procedural guidelines for processing Section 408 requests.

What does Section 408 mean to my proposed project?

USACE Civil Works projects include flood risk management, navigation, recreation, and infrastructure and environmental stewardship. Many of these projects support life safety. It is important that the intended functions of these projects are not at risk by a proposed alteration. Section 408 is intended to ensure proposed alterations to federal projects do not compromise the original purpose of the project or increase life safety risks.

What is a Section 408 review?

A Section 408 review includes an engineering, environmental, real estate, and legal review to ensure a proposed alteration does not impair the usefulness of the federal project and is not injurious to the public interest. The District Commander or the Commander's designee has the authority to approve all alterations to the USACE civil works facilities that do not require review and approval by the Division Commander. The requests that require Division Commander review and approval are:

1. Proposed alterations that require a Safety Assurance Review (SAR)
2. Proposed alterations for the installation of hydropower facilities. Coordination and concurrence with the division Dam Safety Officer and the division Hydropower Coordinator is required prior to the final Section 408 decision.
3. Proposed alterations for which the non-federal sponsor for a USACE project is seeking potential credit under Section 221 of the Flood Control Act of 1970, as amended. A decision on a Section 408 request is separate from any decision on potential credit for in-kind contributions.

4. Proposed alterations that affect the formulation, evaluation, or selection of alternatives for a current study under the Investigations account or other USACE study. Coordination with the division Chief of Planning is required prior to the final Section 408 decision.
5. Proposed alterations that change how the USACE project will meet its authorized purpose.
6. Proposed navigation alterations for which federal assumption of operation and maintenance under Section 204(f) of Water Resources Development Act of 1986, as amended, is also being sought.

What does a Section 408 application package include?

Requesters are responsible for preparing and submitting the required technical and environmental documentation. All proposed alterations must meet current USACE design and construction standards. Section 408 requests must include the following information (as applicable):

- Statement of No Objection from the Non-Federal Sponsor
- USACE Project and Alteration Description
- Technical Analysis and Design
- Environmental and Cultural Resources Compliance
- Real Estate Requirements
- Operations and Maintenance

What are the different options for seeking Section 408 permission?

There are three options available for seeking Section 408 permission. Early coordination between USACE, requester, and non-federal sponsor is recommended in order to determine the optimal option below.

1. **Categorical Permission:** A Section 408 request that is consistent with the terms and conditions of an established categorical permission can allow for a simplified review process. See the Categorical Permission link under Section 408 Resources for more information on this process.
2. **Single-Phased review:** Requesters submit all required information at one time for USACE to review and render a decision.

Multi-phased review: Requesters can decide to pursue Section 408 permission in milestones. In other words, USACE conducts interim reviews as the level of detail on a proposed alteration develops. Note, effects to the environment, public interest, and the USACE project must be assessed as a whole, and cannot be reviewed incrementally.